

NEW ISSUES & RECOMMENDATIONS

CHAPTER 2

In Chapter Two of the IPA 1999 Year End Report, three new issues are introduced. In addition to discussing and analyzing the new issues, recommendations are included. The following is a synopsis of the issues presented in this chapter:

I. Strengthening the complaint process to meet the public's expectation

- The Office of the Independent Police Auditor (IPA) has been effective in recommending policy changes to the San José Police Department (SJPD). However, in order to address the specific needs of citizens filing complaints, a restructuring of the IPA office needs to take place.

II. Voluntary Mediation Program

- The feasibility of implementing a voluntary mediation program at the San José Police Department (SJPD) is recommended. An example of how the program could be implemented and how it could work is included.

III. Improving police communications

- This issue offers examples of citizen complaints, which allege poor communication skills by San José Police Officers, and provides recommendations for improvement.

I. STRENGTHENING THE COMPLAINT PROCESS TO MEET THE PUBLIC'S EXPECTATIONS

Throughout the six years of operation of the Independent Police Auditor, (IPA) many adjustments to the policies and procedures that govern the duties of this office have been made. The need for these changes arose as the policies were put into practice, as new responsibilities for the IPA were created and in response to public expectations of this office. Under the current city administration, headed by Mayor Ron Gonzales, a new approach to delivering services has been introduced. This new approach provides

services to the public as viewed from a citizen's perspective. To accomplish this, the IPA office must undergo the following changes.

Personalizing communications with citizens and complainants

The IPA was designed to broadly impact the citizen complaint process through policy changes that deter the reoccurrence of similar misconduct rather than focusing on the outcome of individual complaints. While it is important to address policy changes because it has a broader impact, it is also important to meet the specific needs of the individual citizen filing a complaint. Therefore, more time should be spent informing and updating complainants and making them feel a part of the process. The IPA needs to be adequately staffed to communicate and interface with individual complainants. Currently, the IPA communicates with complainants when a complaint is initiated at

the IPA or a specific request is made by the complainant to have the IPA track his/her complaint. In any event, most communication by the IPA is done through form letters or phone calls. Without the benefit of personalized interaction with the complainant, the IPA will continue to have a problem building confidence with the community. Especially when one considers that two often heard criticisms by complainants is that the IPA has no subpoena or investigative powers.

Subpoenas for civilian witnesses

A recurring problem that is encountered in the investigation of citizen complaints is the problem of how can an investigator compel a witness to divulge much needed information. Subpoenas and subpoenas duces tecum are used in the judicial system to summon witnesses and/or documents, respectively. There are two types of witnesses in the citizen complaint investigation process to whom subpoenas would apply,

police officers and citizens. Under current practice, police officers must attend when summoned by the Professional Standards and Conduct Unit (PSCU) to an interview concerning the investigation of a citizen complaint. Subject and witness officers must respond to all questions not in violation of the Police Officers Bill of Rights or they may be subject to discipline for insubordination, up to and including termination.

Currently, neither the PSCU nor the IPA has the authority to compel a citizen witness to be interviewed or release and/or provide physical evidence such as medical records that may be an integral part of an investigation. Because of this, subpoenas are needed for citizen witnesses. It would be counterproductive to compel complainants to make a statement if they don't desire to follow through with their complaint. However, subpoenas would be very useful in cases where a witness is reluctant to get involved for whatever reason, but may be more inclined to

cooperate if they are summoned. In addition, subpoenas duces tecum, which are used to subpoena records are very necessary and often provide the most reliable evidence.

The City Council could grant the PSCU the authority to issue subpoenas similar to the Civil Service Commission and the City Attorney. Because the PSCU has the responsibility for conducting complaint investigations, it is appropriate that they be given the authorization to issue subpoenas. Providing the PSCU with subpoena power would enhance the investigative process and provide another tool for increasing public confidence in the complaint process. Additionally, the IPA could benefit by working with the PSCU to compel reluctant witnesses to divulge information or by securing physical evidence that may be discovered during the audit or the follow-up investigation process. Having this capability could be a win-win for both the PSCU and the IPA.

Recommendation

1. Have the City Council grant the PSCU subpoena power to compel the attendance of civilian witnesses, to compel the production of documentary or physical evidence and to administer oaths and affirmations.

Follow-up Investigations

Another criticism of the Independent Police Auditor is that it has no investigative power.

Currently, the IPA has the authority to conduct what is commonly known as a follow-up investigation of a citizen complaint. This process is done once the investigation has been completed by the PSCU and forwarded to the IPA for auditing. Follow-up investigations include such steps as interviewing witnesses to compare their statements to the statements contained in the PSCU investigation; inspecting the scene; reviewing all the police reports; and examining all the physical evidence. The only restriction imposed by the Municipal Code is that questioning of police officers be done through a PSCU investigator.

This restriction does not preclude the Auditor from questioning the officers; it only adds an intermediary to repeat the questions from the Auditor to the officer.

There is a lack of familiarity by the general public with the work and process involved in conducting an audit. People assume that an audit is strictly the examination of documents. To address this concern, the IPA needs to invest in informing the public through various marketing mediums. The IPA should identify and utilize terms that have a wider recognition and understanding in the community. The IPA should use general terms such as "follow-up investigation" to describe what is involved in an audit of a citizen's complaint. This is not currently done because the term investigation is not expressly mentioned in the IPA's policies and procedures. Therefore, it is recommended that the City Council amend the Municipal Code to define an audit of a citizen's complaint and to clarify that a follow-up investigation is an

integral component of an audit.

Recommendation

1. Amend the Municipal Code to define an audit and to clarify that an audit includes a follow-up investigation.

II. PROPOSED VOLUNTARY MEDIATION PROGRAM

Over the past several years the IPA and the Chief of Police have discussed the benefits of providing an alternative process for mitigating minor complaints against officers. The IPA researched the mediation process and determined that a voluntary process of mediation that brings the complainant and the officer together to discuss the issue at hand can lead to a better understanding of the reason for a person's demeanor and the effect it may have on others.

The voluntary mediation program as proposed by the IPA could be an alternative to the formal investigation process and could provide an opportunity to facilitate meaningful dialog between the

complainant and the officer. The following is a brief description of how the program could be implemented.

How Complaint Mediation

Works

The process begins when a citizen has a concern with the actions of an officer and chooses to file a complaint with the IPA or the PSCU. The complaint is first reviewed and if it is determined to be minor in nature, such as a disagreement with a policy, courtesy, or procedure, the complaint may be considered for resolution through mediation. If the complaint meets the criteria for mediation, the complainant and the officer are then asked if they would be interested in resolving the complaint through the mediation process. If both parties agree, the complaint is forwarded to a neutral third party mediator. Once the complaint has been mediated, the mediator submits a confidential report with findings to the Chief of Police. The findings are retained by the PSCU for statistical purposes only. Once the complaint has

been mediated, the complaint allegation is removed from the officer's record of complaints.

HOW MEDIATION WORKS

Let's say it's a late summer evening and a person is walking through downtown Saint James Park, when a patrol car drives by slowly and after passing, stops and backs up. An officer quickly jumps out and begins to question the person and requests identification. Before the person can give the officer his identification card, the officer's radio sounds and the officer without saying a word, jumps in his car and quickly drives away.

COMPLAINT

The person is outraged by the stop, and the following day goes to the IPA and files a complaint for harassment and discrimination. The complaint is forwarded to the SJPD Professional Standards and Conduct Unit (PSCU) for investigation. The PSCU reviews the complaint and feels it is a less serious transgression, and may warrant disposition through the mediation process.

CASE REFERRED

With the approval of the police officer and the complainant, the case is referred for disposition through the Mediation Program. The mediator is called and a date is set for mediation. At the mediation hearing, the complainant and the officer come face-to-face in an informal, confidential session.

After learning that the officer was looking for a suspect that fit the description of the complainant, the complainant is satisfied that he wasn't targeted and apologizes for the misunderstanding. The officer on the other hand apologizes for not taking the time to communicate the reason for the stop and for leaving without bringing closure to the detention.

SUGGESTIONS

The mediator issues non-binding suggestions that both sides try to see one another's position.

FURTHER ACTION

Prior to the mediation process, the complainant signs a form agreeing that if he/she is not satisfied with the mediation process, he/she is precluded from filing a new complaint on the same incident. This prohibition does not prevent the complainant's ability to seek legal remedies.

Why Mediation?

In a significant number of police misconduct complaints the true facts are difficult to ascertain, especially in those cases that are one on one such as, discourtesy or attitude based complaints. The majority of these types of complaints result in a finding of “not sustained.” This is because there is no independent witness to corroborate or dispute the allegation. The complainant feels that his/her side of the story was not heard or believed and that the process for the most part favors the officer and did not work for him/her. In an investigation that is based on facts and uses a standard of preponderance as a measure to sustain allegations, there will continue to be dissatisfaction because this type of allegation (one on one) is difficult to prove.

With a mediation process, the officer and complainant can gain an understanding as to why they acted or did what the other felt was unreasonable. When parties are given a forum for expressing their side of the story, often a

different perspective is gained and sometimes the actions or words that led to the complaint become understandable and make sense. If successful, mediation can lead to a better understanding of ones actions and create a process that can bring parties together to discuss the conduct specific to a given case.

The goal in police misconduct investigations is to determine and correct errant behavior. While traditional discipline is an important and necessary part of the complaint process, mediation is also a powerful tool that can bring about real change. In a process of successful mediation there is no winner or loser and both parties come away with a better perspective and understanding of the other person's feelings and actions.

Recommendation

1. It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.

III. IMPROVING POLICE COMMUNICATION SKILLS

Every year, members of the San José Police Department (SJPD) come in contact with the public in excess of 500,000 times. It is difficult to assess how many people were satisfied or dissatisfied with the services they received from the SJPD, and did not follow through with filing a commendation or a complaint. The author of Complaints and Angry Customers believes that, “most people, more than 90 percent, don't tell you when they are disappointed with the service they received; but they do tell family, friends, acquaintances and even strangers.” The person, who does tell, offers a diamond - in the rough. The key is in turning that roughness into an asset for the organization and the citizen.

Complaints handled by the Chain of Command, by the Chief, at the information center, or by other means, are not reported nor tracked by the Office of the

Independent Police Auditor (IPA). The IPA tracks all those public contacts where a person either called the IPA office or the Professional Standards and Conduct Unit (PSCU) to lodge a service related complaint. Citizen complaints, while few in comparison to the number of citizen-to-police contacts, form the basis of the IPA's analysis and subsequent recommendations. Experts in customer relations have found complaints to be the most accurate source of identifying those areas that need improvement.

According to Mike Griffin's book, Tell Me Where It Hurts, the public gives feedback about the quality of services through the filing of a complaint. The complaint process is like a doctor for people who are sick. The goal is to prevent "illness" and take care of what hurts by listening, analyzing and interpreting "symptoms," then diagnosing and prescribing a remedy. This goal is reached by looking for trends and identifying "epidemics," conferring with experts to find a cure, and

preventing others from contracting the same illness.

In analyzing many complaints filed in 1999, the IPA identified a pattern indicating that in a significant number of police to citizen contacts, it appears that the officers did not communicate effectively and that this failure to communicate may have led to a physical confrontation, the filing of a citizen complaint, or a negative opinion of the police department. Several of the complaints reviewed in preparation of this report had a common theme, citizens alleged that the officer did not explain, respond to questions or listen to them. The majority of the cases involved traffic stops and searches of homes and cars. The majority of the cases were a one on one resulting in a stalemate. Some of the conduct, while inappropriate, does not meet the criteria to sustain a Rude Conduct allegation.

Examples of allegations in complaints reviewed

The examples below were allegations found in complaints.

1. The complainant and her employee left her business to get something to eat. An officer pulled them over and proceeded to search her car, glove box and trunk. The complainant alleged she was never provided with the reason for the stop or for the search.
2. The complainant alleged her son was stopped, ordered to exit his car at gunpoint, made to crawl on the ground in the dirt and mud and then sent on his way without explaining why or offering an apology.
3. The complainant alleged that the police entered his house without permission. It was later determined that the police entered the wrong address. The police left without explaining what was going on or offering an apology.

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| <p>4. The complainant's relative was killed in an officer-involved-shooting. The complainant alleged that the police failed to explain to the family what had happened. The family felt they were detained and questioned like suspects without showing compassion to their loss. The family alleged that they were not told why the police shot and killed their loved one and instead had to read the details in the newspaper.</p> | <p>answer questions. Other cases reviewed showed a pattern of conflict arising when a citizen questioned the officer's actions and the officer appeared to react defensively over his/her authority being questioned. Still in other cases, complainant's alleged that officers refused to identify themselves or failed to provide basic information, which the police should anticipate people would want to know. In 1999, there were 84 complaints that were traffic related. In some of these complaints, better communication with the motorist may have prevented the complaint.</p> | <p>Sir. Do you know why I stopped you? Or, I stopped you because you were exceeding the posted speed limit. May I see your driver license?" The officer then offers a friendly greeting as an ice-breaker, thus setting the tone for the interaction with the citizen. The officer explains why he/she stopped the person. The officer doesn't accuse the motorist of speeding, instead uses a phrase that is less judgmental or accusatory. Then the officer requests to see the motorist's driver's license.</p> |
| <p>5. Family members of a person who died in the custody of the SJPd complained that they were given the run-around when attempting to find out when the body would be released in order to make funeral arrangements.</p> | <p>In researching what other agencies do to minimize conflict, the IPA contacted the California Highway Patrol (CHP). Consideration should be given to adopting a practice similar to that used by the CHP. When a CHP officer conducts a traffic stop he/she is trained to first greet the motorist, then tell them why they were stopped using non-accusatory phrases and then asking for their driver's license. The officer may say, "Hello, good afternoon</p> | <p>In contrast, SJPd officers are alleged to first ask for a driver's license before offering an explanation for the traffic stop. It is foreseeable that the average motorist would want to know why he/she was stopped. If the officer is intent on first obtaining a driver's license and the motorist on finding out why he/she was stopped, communication is likely to fail and conflict arise.</p> |
| <p>Some of the examples cited above may have been isolated incidents. Other cases may be examples where for good reason, the officers were not able to initially inform the citizen of their enforcement action or may not have had time afterwards to</p> | <p>Failing to communicate effectively can be costly. It increases the cost of police services and it</p> | |

waste human resources. When an officer terminates a call for service and leaves the citizen uninformed, it leads to frustrated citizens seeking redress from different agencies or at different levels of the same agency, resulting in duplicate effort and compounding costs. People will sometimes complain to the IPA, the PSCU, the Chief of Police, a City Council Member or the Mayor about the same incident.

A review of the current training offered at the Police Academy and the ongoing police in-house training found that communication skills is an area that is incorporated into several courses but there is no training that specifically addresses day to day communications or proper etiquette in addressing the public.

2. In cases where the police erred, i.e. the wrong home was searched, an explanation and/or apology should be given as soon as possible, preferably at the onset.
3. Motorists should be told the reason for the enforcement action such as a stop, a search, and a detention as soon as possible and preferably at the onset.

4. The SJPD should formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody in an effort to assist the family and/or provide them with necessary but non-confidential information.

Recommendations

1. The SJPD should design a training course focused specifically on improving day to day verbal communications when dealing with the public.